IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4811 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LINC DIGITAL SYSTEMS PVT.LTD.

Versus

ASSTT.PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 4811 of 2004

MR DIPAK R DAVE for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 29/06/2004

ORAL JUDGEMENT

Rule. Mr.P.J.Mehta waives service of notice of rule on behalf of the respondent. At the joint request of the learned advocates for the parties, the petition is

taken up for final hearing forthwith.

2. In the present petition, the petitioner has challenged the order dated 30th June, 2003 passed by the respondent under the provisions of section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act ("the said Act" for short) as well as the order dated 1.1.2004 passed by the said Authority in exercise of powers under section 7-B of the said Act. It is the case of the petitioner that the petitioner was served with the notice of proceedings under the provisions of the said Act and that the representative of the petitioner had remained present before the respondent and submitted its case. It was informed to the petitioner by the person who was at that time discharging the duties of Assistant Provident Fund Commissioner that appropriate orders will be communicated to the petitioner. It is the case of the petitioner that subsequently, the said officer retired and a new officer carried on the proceedings without issuing fresh notice to the petitioner and that therefore, the petitioner could not participate and the order came to be passed ex-parte. The petitioner sought review of the order dated 30th June 2003 which was also rejected by the order dated 1.1.2004.

3. By the order dated 19.4.2004, this Court had issued notice and granted ad-interim relief to the petitioner on the condition that the petitioner deposits an amount of Rs.10,000/- towards cost of the litigation and 25 per cent of the amount ordered by the order dated 30th June 2003. I am informed by the learned advocate for the petitioner that the said amounts have been duly deposited.

4. Considering the situation arising in the present petition, I am of the view that the petitioner is required to be afforded an opportunity to represent its case before the respondent Authority and that the ex-parte order dated 30th June 2003 as confirmed by the subsequent order dated 1.1.2004 is required to be set aside.

5. Accordingly, I quash and set aside the order dated 30th June 2003 as well as the order dated 1.1.2004 and remand the matter to the respondent for fresh consideration and disposal after hearing the petitioner. The amount of Rs.10,000/- deposited before this Court be paid over to the respondent. Subject to the above directions, the petition stands disposed of. Rule is made absolute to the above extent.

(Akil Kureshi, J.)

(vjn)